

Remarks/Arguments:

Applicants are submitting the instant preliminary amendment to claims 1, 17, 21, 22, and 32. These amendments have been made to place the instant application in a better position for allowance.

It is believed the above amendments render moot the rejection of claims in light of U.S. Patent No. 5,222, 961 to Nakao cited in the Final Office action dated April 30, 2008 and the Advisory Action dated July 15, 2008.

Therein, the Examiner argues that Nakao discloses a surgical clip that comprises:

- a first arm;
- a second arm that is substantially parallel to the first arm; and
- a bridge connecting said first and second arms to form a substantially U-shaped structure.

Although Applicants respectfully disagree with any characterization that the Nakao surgical clip has a substantially U-shaped structure at a single point in time, the above amendments clearly make such arguments moot and place the instant application in a better position for allowance. As currently amended, claims 1, 17, 21, 22, and 32 recite, *in relevant part*:

a bridge connecting first and second arms to form a substantially static U-shaped structure retaining the shape prior to, throughout, and subsequent to application;
and

EITHER:

at least one deformable retainer extending from one end of said arms in a direction (claims 1, 21, 32).

OR

at least one deformable retainer extending from one of said arms (claims 17, 22).

The addition of a time reference (prior to, throughout, and subsequent to) is meant to confirm that

that a "substantially static U-shaped structure" means that the bridge connecting the first and second arms of the clip will remain in this shape during the **entire application of the surgical clip and both before and after**. To maintain this substantially **static** U-shaped structure, the second arm is substantially parallel to the first arm **during the application**. This includes the time in which the retainer portion is deformed when applied to the tissue. During application, the retainer portion of the clip is the only portion that is deformed. The rest of the clip (i.e., the bridge and the two arms) remains in its substantially static U-shaped structure.

CONCLUSION

Applicants acknowledge the continuing duty of candor and good faith to disclosure of information known to be material to the examination of this application. In accordance with 37 CFR §1.56, all such information is dutifully made of record.

It is believed that no fee is due with this Amendment. However, if any fees are due with respect to Sections 1.16 or 1.17, please charge to the deposit account of the undersigned firm, Acct. No. 503,836.

PLEASE CALL the undersigned if that would expedite the prosecution of this application.

Respectfully submitted,

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